IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL FIRST APPEAL NO.313/1997.
Kishan Dutt Sharma. VERSUS Rajendra Prasad & Others.

27.08.2007.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Iswar Jain, for the appellant.
Mr.R.K.Agarwal, for the respondent No.3.

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From the report of the process server dated 29.10.2006 it was reported that the respondent No.4 Girraj Prasad Kaushik died about two years ago i.e. somewhere in the year 2004.

As per the office report dated 07.03.2007 this fact was brought to the notice of the court and the appellant was required to take necessary steps on that behalf. When no steps were taken, the matter was ordered to be listed before the Registrar (Administration) on 09.07.2007 and two weeks time was allowed to do the needful.

Thereafter, the matter was listed in the court on 26.07.2007 and four weeks time was allowed to do the needful.

As no steps were taken within four weeks, after the passing of the order dated 26.07.2007, the matter has been listed to before the court.

Learned counsel for the respondent No.3 submits that in view of the death of the respondent No.4, the appeal stands abated as the suit was one for specific performance of the agreement of sale and in the absence of the respondent No.4, the property in dispute cannot be sold and the suit had been

dismissed by the learned trial court. In that view of the matter, it is submitted that the findings of the learned trial court, even if the appeal is accepted, as against the respondent No.4 cannot be altered in his/his LRs absence and the same would result in a conflicting decrees.

Prima facie, from the above, it is clear that the appeal has abated as no substitution has been made.

Consequently, the appeal is dismissed as having abated. However, liberty is granted to the appellant to move an application for setting aside the abatement. The appeal as well as the stay application stands disposed of, as above.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.